

KEVIN V. RYAN (CSBN 118321)  
United States Attorney

MARK L. KROTKO (CABN 138549)  
Chief, Criminal Division

KIRSTIN M. AULT (CABN 206052)  
450 Golden Gate Ave., Box 36055  
San Francisco, California 94102  
Telephone: (415) 271-3059  
Facsimile: (415) 436-7234  
[kirstin.ault@usdoj.gov](mailto:kirstin.ault@usdoj.gov)  
Assistant United States Attorney

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

## OAKLAND DIVISION

UNITED STATES OF AMERICA, ) No. CR 03-40210 SBA

Plaintiff,

## **UNITED STATES' STATUS CONFERENCE STATEMENT**

MOHAMMAD YOUSUF CHAUDHRY, )

and )

Pretrial: March 6, 2007

Trial Date: March 12, 2007

ALI H. KHAN,

Time: 8:30 a.m.  
Sec. 1 Sec. 2 No. 3

Court: Courtroom No. 1  
Hon. S. Brown

### Defendants

Hon. S. Brown At

**Defendants:**

The United States hereby submits the following status conference statement in this matter. The United States believes that counsel for defendant Chaudhry has requested this hearing to inform the Court that he will be unable to represent defendant Chaudhry at a trial that is set to begin on March 12, 2007. Because trial in this case has already been continued repeatedly to accommodate defense counsel's conflict with two other trials set in this district, the United States opposes any further continuance of the trial in this case.

## BACKGROUND

Defendant Chaudhry was initially charged in 2002 with copyright-related offenses. Those charges were dismissed in favor of the current indictment, which was returned on October 23,

1       2003. The present indictment charges defendant Chaudhry with subscribing to false tax returns  
 2       for the years 1999 through 2001, and charges both defendants with structuring transactions that  
 3       occurred during this same time period. Thus, the conduct at issue in this case occurred over five  
 4       years ago.

5       On November 30, 2004, an initial trial date was set for May 16, 2005. That trial date has  
 6       now been continued four times, with at least three of the continuances arising out of conflicts  
 7       with trials set in *United States v. Quan*, CR 04-00323 WBS, and *United States v. Video Networks*  
 8       *Communications*, CR 05-00208 CRB. Counsel for defendant Chaudhry represents one of the  
 9       lead defendants in both of these cases and represents the lead defendant in this case. The  
 10      conflicts arose either with the trial dates themselves or with defense counsel's need for sufficient  
 11      time to prepare in between the end of one trial and the beginning of the next. The *Quan* and  
 12      *Video Networks* trials are complex, multi-defendant matters that are expected to take two to three  
 13      months to try. The following table sets forth the history of the overlapping trial dates in these  
 14      cases.

Date	Case	Action	Trial Date
11/30/04	Chaudhry Quan Video Networks	trial set trial not yet set case not yet indicted	5/15/05
3/30/05	Chaudhry Quan Video Networks	trial continued trial not yet set case not yet indicted	10/24/05
5/25/05	Chaudhry Quan Video Networks	trial remains set trial not yet set trial set	10/24/05 1/17/05
10/25/05	Chaudhry Quan Video Networks	trial continued trial not yet set trial remains set	4/24/06 1/17/06
11/1/05	Chaudhry Quan Video Networks	trial remains set trial set trial remains set	4/24/06 6/5/06 1/17/06
12/14/05	Chaudhry Quan Video Networks	trial remains set trial remains set trial continued	4/24/06 6/5/06 6/5/06
2/17/06	Chaudhry Quan Video Networks	trial remains set trial continued trial remains set	4/24/06 10/2/06 6/5/06

Date	Case	Action	Trial Date
3/13/06	Chaudhry Quan Video Networks	trial continued trial remains set trial remains set	9/11/06 10/2/06 6/5/06
3/29/06	Chaudhry Quan Video Networks	trial remains set trial remains set trial continued	9/11/06 10/2/06 1/8/07
8/23/06	Chaudhry Quan Video Networks	trial continued trial remains set trial remains set	3/12/07 10/2/06 1/8/07
9/19/06	Chaudhry Quan Video Networks	trial remains set trial continued trial remains set	3/12/07 1/16/07 1/8/07
12/8/06	Chaudhry Quan Video Networks	trial remains set trial remains set trial continued	3/12/07 1/16/07 4/2/07

As this chart demonstrates, the three trials have been “leapfrogging” over each other for over a year. Since November of 2005, the three cases have not been set such that defendant Chaudhry’s counsel could participate effectively in all three cases. For example, on November 5, 2005, the Video Networks case (anticipated to last two to three months) was set for trial in mid-January; trial in this case (anticipated to last three weeks) was set to begin three months later in April; and trial in the *Quan* case (anticipated to last two to three months) was set to begin five weeks later. With this back-to-back trial schedule, defense counsel was left with little to no time to prepare in between cases. On December 14, 2005, the *Quan* and *Video Networks* trials were set on the same day, only two weeks after the trial in this matter was anticipated to conclude. On March 13, 2006, the trial in this case was continued to September 11, 2006 – a date only one week after the *Video Networks* trial was anticipated to conclude and three weeks before the *Quan* trial was set to begin, leaving defense counsel with no time to prepare for that case. On August 23, 2006, the trial in this matter was continued to the present date of March 12, 2007, to accommodate the conflict with the *Quan* trial. However, the *Quan* trial did not go forward but instead was rescheduled to January 16, 2007, a date that put it in direct conflict with the March 12, 2007 trial date in this matter and the January 8, 2007 trial date in *Video Networks*. The three trials are now set such that the *Quan* trial overlaps the trials in both this case and the *Video*

1 Networks matter.

## 2 DISCUSSION

3 This Court has made every effort to insure that defendant Chaudhry may be effectively  
 4 represented at trial. It has repeatedly continued the trial date to accommodate defense counsel's  
 5 conflicting trial schedule and has given defense counsel over two years to prepare an effective  
 6 defense. The Supreme Court has recognized that the Speedy Trial Act, 18 U.S.C. §§ 3161-3174,  
 7 was designed not just to benefit defendants, but also to serve the interests of the public in prompt  
 8 dispositions of criminal matters. *Zender v. United States*, 126 S. Ct. 1976, 1985-86 (2006)  
 9 (citing the Act's legislative history which referred to "the debilitating effect[s] of court delay  
 10 upon our criminal justice system"). Any further delay in this trial would undermine those  
 11 interests.

12 In addition to prejudicing the public's right to prompt resolution of criminal matters,  
 13 delaying this matter again will severely inconvenience the government and, more importantly, the  
 14 witnesses it intends to call at trial. After each of the previous continuances, the United States  
 15 contacted witnesses from around the country to explain the change of schedule and directed them  
 16 to adjust their schedules. The last continuance was granted only two and a half weeks before  
 17 trial, after the United States had made its pretrial filings and after the United States' witnesses  
 18 had made plans to testify at trial beginning the week of September 11, 2006. After the last  
 19 continuance was granted, those witnesses were asked to arrange their future plans and  
 20 commitments to allow them to testify in March of 2007. The additional proposed delay would  
 21 force yet another round of witness contacts and yet another disruption to those witnesses' lives,  
 22 commitments, and future plans. The Ninth Circuit has consistently held that such severe  
 23 inconvenience is a legitimate basis for denying continuance requests. See *United States v.*  
 24 *Robinson*, 967 F.2d 287, 291 (9th Cir. 1992) (any delay beyond two continuances totaling almost  
 25 one year was unwarranted, as "any further delay would have inconvenienced the court, the  
 26 government, and the government's thirteen witnesses"); *United States v. Shirley*, 884 F.2d 1130,  
 27 1135 (9th Cir. 1989) ("A continuance would have resulted in inconvenience to the government  
 28 which planned to call over 70 witnesses . . ."); *United States v. Pope*, 841 F.2d 954, 957 (9th

1 Cir. 1988) (noting the inconvenience of a requested continuance when witnesses were to appear  
2 from out-of-state).

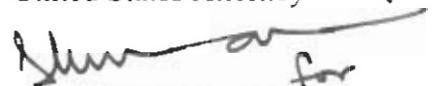
3 Finally, the United States does not believe that another extension will resolve the matter.  
4 As the cases are presently set, the *Video Networks* case cannot be tried on the scheduled date of  
5 April 2, 2007, if the *Quan* case proceeds, as presently set, on January 16, 2007, and lasts the  
6 anticipated three months. Therefore, another continuance of the trial date in *Video Networks* will  
7 undoubtedly be necessary. Because Judge Breyer has indicated his desire to proceed as  
8 expeditiously as possible in that matter, it is likely that whatever date is set for that lengthy trial  
9 will conflict with any date set in this case. The United States believes that the time has come to  
10 avoid further continuances. If holding to the March 2007 trial date creates scheduling conflicts,  
11 defense counsel should resolve those conflicts absent a continuance in this case.

12

13 DATED: 12/18/2006

Respectfully Submitted,

14 KEVIN V. RYAN  
United States Attorney

15   
16 KIRSTIN M. AULT  
17 Assistant United States Attorney

18

19

20

21

22

23

24

25

26

27

28

CERTIFICATE OF SERVICE

United States v. Mohammad Yousuf Chaudhry, and Ali H. Khan  
CR-03-40210 SBA

I, Adrienne Link, declare that I am a citizen of the United States, over the age of 18 years and not a party to the within action.

I hereby certify that a copy of the foregoing:

## 1. United States' Status Conference Statement

was served today \_\_\_\_ by hand;  by facsimile; \_\_\_\_ by Federal Express;  by first class mail by placing a true copy of each such document in a sealed envelope with postage thereon fully paid, either in a U.S. Mail mailbox or in the designated area for outgoing U.S. Mail in accordance with the normal practice of the United States Attorney's Office; \_\_\_\_ by placing in the Public Defender's pickup box located in the Court Clerk's Office.

Seth P. Chazin  
Attorney at Law  
1164 Solano Ave., #205  
Albany, CA 94706  
(510) 525-0087

Erik Babcock  
Attorney at Law  
1212 Broadway, #726  
Oakland, CA 94612  
(510) 452-8405

I declare under penalty of perjury that the foregoing is true and correct, and that this certificate was executed at Oakland, California.

DATED: December 18, 2006

  
ADRIENNE A. LINK  
Legal Assistant  
United States Attorney's Office